

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CLAYTON ROUECHE,

Defendant.

Case No. CR07-344RSL

ORDER DENYING
DEFENDANT'S THIRD
MOTION FOR
COMPASSIONATE
RELEASE

This matter comes before the Court on defendant's *pro se* motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). Dkt. # 450. Having considered the motion, Probation's memorandum (Dkt. # 451), the Government's response (Dkt. # 453), and the record contained herein, the Court DENIES the motion and finds as follows:

I. Background

Defendant is a 49-year-old inmate currently incarcerated at Federal Correctional Institution Oxford ("FCI Oxford"). Dkt. # 454; *See Inmate Locator*, www.bop.gov/inmateloc (accessed Oct. 30, 2024). On April 28, 2009, defendant pled guilty to three offenses: conspiracy to export cocaine in violation of 21 U.S.C. §§ 953, 960(a)(1), (b)(1)(B), and 846; conspiracy to

1 import marijuana in violation of 21 U.S.C. §§ 953, 960(a)(1), (b)(1)(G), and 963; and conspiracy
2 to engage in money laundering in violation of 18 U.S.C. § 1956(h). Dkt. # 257.

3
4 On December 16, 2009, the Court sentenced defendant to a 360-month prison term and
5 five years of supervised release. Dkt. # 353. On January 10, 2019, defendant filed a motion
6 seeking a reduction in his sentence based on amendments to the United States Sentencing
7 Guidelines. Dkt. # 407. On April 23, 2019, the Court granted defendant's motion and reduced
8 defendant's sentence to 288 months, a sentence in the middle of the new Guidelines range. Dkt.
9 # 414. Defendant is currently scheduled for release from the custody of the Federal Bureau of
10 Prisons ("BOP") on November 25, 2027. *See Inmate Locator*, www.bop.gov/inmateloc
11 (accessed Oct. 30, 2024).

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14 This is defendant's third motion for compassionate release. Defendant's first motion
15 sought release primarily on the basis that he needed to care for his mother and evidence of his
16 post-sentence rehabilitation. Dkt. # 425. The Court denied defendant's first motion for
17 compassionate release on July 2, 2021. Dkt. # 432. Defendant's second motion sought release
18 primarily because a change to the federal Controlled Substance Act had removed hemp from the
19 definition of marijuana. Dkt. # 443. Defendant argued that because some amount of the
20 marijuana he pled guilty to conspiring to import was actually hemp, he had been "punished with
21 a much longer sentence" than he would have received had he been sentenced after the change to
22 the Act. *Id.* The Court denied defendant's second motion for compassionate release on
23 November 4, 2022, finding that even if all the marijuana defendant pled guilty to importing was
24 categorized as "hemp," defendant's sentencing range would be unchanged. *Id.*

II. Legal Framework

“A federal court generally ‘may not modify a term of imprisonment once it has been imposed.’” *Dillon v. United States*, 560 U.S. 817, 819 (2010) (quoting 18 U.S.C. § 3582(c)). Congress has provided an exception to that rule, known as compassionate release, which allows the Court to reduce a sentence for “extraordinary and compelling reasons.” 18 U.S.C. § 3582(c); *see also United States v. Aruda*, 993 F.3d 797, 799 (9th Cir. 2021); *United States v. Keller*, 2 F.4th 1278, 1281 (9th Cir. 2021). The First Step Act of 2018 amended the procedural requirements governing compassionate release. Prior to the First Step Act’s passage, only the Director of the BOP could bring motions for compassionate release. Now, under the First Step Act, defendants are permitted to directly petition the Court for compassionate release. As amended, 18 U.S.C. § 3582(c)(1)(A) states in relevant part:

(c) Modification of an imposed term of imprisonment.—The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction; . . .

(ii) . . .

1 and that such a reduction is consistent with the
 2 applicable policy statements issued by the Sentencing
 3 Commission[.]

4 Before passing the First Step Act, Congress directed the Sentencing Commission to
 5 promulgate a policy statement defining “extraordinary and compelling reasons” in the
 6 compassionate release context. *See* 28 U.S.C. § 994(t). In doing so, Congress instructed that
 7 “[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling
 8 reason.” *Id.* The Sentencing Commission implemented this directive from Congress with a
 9 policy statement, U.S.S.G. § 1B1.13. In relevant part, the policy statement provides,
 10

11 **Reduction in Term of Imprisonment Under 18 U.S.C. § 3582(c)(1)(A)**
 12 **(Policy Statement)**

13 **(a) In General.**—Upon motion of the Director of the Bureau of Prisons
 14 under 18 U.S.C. § 3582(c)(1)(A), the court may reduce a term of
 15 imprisonment (and may impose a term of supervised release with or
 16 without conditions that does not exceed the unserved portion of the original
 17 term of imprisonment) if, after considering the factors set forth in 18
 18 U.S.C. § 3553(a), to the extent they are applicable, the court determines
 19 that—

18 (1)(A) Extraordinary and compelling reasons warrant the reduction;
 19 . . .

20 (2) The defendant is not a danger to the safety of any other person or
 21 to the community, as provided in 18 U.S.C. § 3142(g); and

22 (3) The reduction is consistent with this policy statement.

23 **(b) Extraordinary and Compelling Reasons.**—Extraordinary and
 24 compelling reasons exist under any of the following circumstances or a
 25 combination thereof . . .

25 (3)(C) The incapacitation of the defendant’s parent when the
 26 defendant would be the only available caregiver for the parent . . .

26 (6) If a defendant received an unusually long sentence and has
 27 served at least 10 years of the term of imprisonment, a change in the
 28 law (other than an amendment to the Guidelines Manual that has not
 been made retroactive) may be considered in determining whether

1 the defendant presents an extraordinary and compelling reason, but
2 only where such change would produce a gross disparity between
3 the sentence being served and the sentence likely to be imposed at
4 the time the motion is filed, and after full consideration of the
5 defendant's individualized circumstances . . .

6 **(d) Rehabilitation of the Defendant.**—Pursuant to 28 U.S.C. 994(t),
7 rehabilitation of the defendant is not, by itself, an extraordinary and
8 compelling reason for purposes of this policy statement. However,
9 rehabilitation of the defendant while serving the sentence may be
10 considered in combination with other circumstances in determining whether
11 and to what extent a reduction in the defendant's term of imprisonment is
12 warranted.

13 U.S.S.G. § 1B1.13.

14 The Ninth Circuit has held that U.S.S.G. § 1B1.13 “is not an ‘applicable policy
15 statement’ for 18 U.S.C. § 3582(c)(1)(A) motions filed by a defendant.” *Aruda*, 993 F.3d at 798,
16 802. The Court may consider U.S.S.G. § 1B1.13 in exercising its discretion, but it is not
17 binding. *Id.*

18 **III. Defendant's Characteristics**

19 In deciding whether to grant defendant's motion for compassionate release under 18
20 U.S.C. § 3582(c)(1), the Court considers: (A) whether defendant has met the statutory
21 exhaustion requirement for compassionate release, (B) whether “extraordinary and compelling
22 reasons warrant such a reduction,” and (C) the sentencing factors set forth in 18 U.S.C.
23 § 3553(a), to the extent they are applicable. *See Keller*, 2 F.4th at 1283-84 (quoting 18 U.S.C.
24 § 3582(c)(1)(A)(i)).

A. Exhaustion Requirement

The Court first determines whether defendant has met the statutory exhaustion requirement. Where, as here, the Director of the BOP has not filed the motion on defendant's behalf, the Court may only consider the motion if defendant has requested that the BOP make such a motion and either (i) defendant has "fully exhausted all administrative rights to appeal a failure of the [BOP] to bring a motion on the defendant's behalf," or (ii) 30 days have elapsed since the "warden of the defendant's facility" received a compassionate-release request from defendant. *Keller*, 2 F.4th at 1281 (quoting 18 U.S.C. § 3582(c)(1)(A)). Defendant asserts that he satisfied the exhaustion requirement by submitting a compassionate release request to the warden at FCI Oxford that was denied on May 24, 2024. Dkt. # 450 at 4, Ex. 1. The government has not challenged defendant's assertion in its briefing, nor has it raised statutory exhaustion as an issue here. Dkt. # 453. Defendant filed his current motion for compassionate release with this Court on August 6, 2024. Dkt. # 450. Because more than 30 days elapsed between defendant's request to the warden at FCI Oxford and defendant's filing with this Court, the motion is properly before this Court. Dkt. #450, Ex. 1. *See United States v. Ibarra*, No. CR16-0287JLR, 2023 WL 3304219, at 2 (W.D. Wash. May 8, 2023) (finding, in similar circumstances, that defendant's motion was properly before the court). The Court therefore considers the merits of defendant's motion for compassionate release.

B. "Extraordinary and Compelling" Circumstances

The Court next considers whether "extraordinary and compelling reasons warrant such a reduction" in defendant's term of imprisonment. 18 U.S.C. § 3582(c)(1)(A). Here, defendant's

1 first contention is that “extraordinary and compelling reasons” are shown because his mother’s
2 medical situation has rendered her incapacitated and defendant is “the only available caregiver”
3 for her. U.S.S.G. § 1B1.13(b)(3)(C). Defendant’s second contention is that “extraordinary and
4 compelling reasons” are shown because he received “an unusually long sentence” that should be
5 reduced due to “a change in the law.” U.S.S.G. § 1B1.13(b)(6). His third contention is that his
6 rehabilitation should be “considered in combination with other circumstances.” U.S.S.G.
7 § 1B1.13(d). The Court considers each of these contentions in turn:
8

10 **1. Defendant Has Not Shown That His Mother Is Incapacitated and He Is the**
11 **Only Available Caregiver.**
12

13 In denying defendant’s first motion for compassionate release on July 2, 2021, this Court
14 stated that incapacitation of the family member and the unavailability of other caregivers is
15 critical to the analysis of whether the circumstances are truly extraordinary and compelling. Dkt.
16 # 432 at 8–9. In 2021, this Court concluded that defendant had “presented insufficient evidence
17 that his mother, Mrs. Roueche, is incapacitated and that he is the only available caregiver.” *Id.* at
18 9. Although the Court remains sympathetic to the challenges Mrs. Roueche is facing, it again
19 concludes that defendant has presented insufficient evidence that his mother is incapacitated and
20 that defendant is the only available caregiver.
21

22 Mrs. Roueche’s current description of her circumstances (Dkt. # 450-1 at 16) is quite
23 similar to the description she provided this Court in 2021 (Dkt. # 427, Dkt. # 432 at 9–10). She
24 suffers from a heart condition that is being managed through medication and a pacemaker. Dkt.
25 # 450-1 at 16, ¶ 9. She reports “severe hypertension,” also managed by medication. *Id.*, ¶ 10.
26

1 She reports arthritis in both knees that makes it impossible to climb stairs and difficult to stand,
2 making it “a great challenge for me to shop on my own, particularly when I have to stand in
3 line.” *Id.*, ¶ 11. She reports challenges with cataracts, however she also states that “I am able to
4 drive” for short distances during daylight “when I’m faced with an urgent need.” *Id.*, ¶¶ 12, 14.
5 In addition, defendant states that “recently” Mrs. Roueche was taken to the doctor by a friend,
6 suggesting that Mrs. Roueche has at least some community support when it comes to traveling
7 for medical care. Dkt. # 450-1 at 17, ¶ 8. Mrs. Roueche views her situation as “quite desperate,”
8 stating that “I am unable to properly care for myself without assistance.” Dkt. # 450-1 at 16,
9 ¶ 16. Without diminishing Mrs. Roueche’s concerns, on the present evidence the Court does not
10 find that Mrs. Roueche is incapacitated in the sense of being incapable of any self-care and
11 totally confined to a bed or chair. *See United States v. McKinney*, No. CR18-096RSM, 2020 WL
12 607698, at *4–5 (W.D. Wash. Oct. 15, 2020) (collecting cases that look, in these circumstances,
13 to the Bureau of Prison’s definition of incapacitation, which says an incapacitated person
14 “cannot carry on any self-care and is totally confined to a bed or chair.”).

15
16 In addition, defendant has failed to show that he is the only available caregiver for Mrs.
17 Roueche. As in 2021, defendant’s younger daughter, Chanel, is currently living in Abbotsford,
18 British Columbia, where she works at a hair salon. *Compare* Dkt. # 432 at 10, *with* Dkt. # 450-1
19 at 19, 20. “Abbotsford is only around a half-hour drive or thirty-five minute bus ride from the
20 city where Mrs. Roueche resides.” Dkt. # 432 at 10. Therefore, as in 2021, “it is unclear why
21 [Chanel] would be totally unable to assist Mrs. Rouche.” *Id.* Defendant’s daughter Chaylin lives,
22 as she did in 2021, in Kelowna, British Columbia, which is around three hours away from Mrs.
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1 Roueche. *Compare* Dkt. # 432 at 10, with Dkt. # 450-1 at 19, 20. As in 2021, “it is unclear why
2 relocation is not an option for Mrs. Roueche.” Dkt. # 432 at 10. Finally, as in 2021, defendant
3 has not mentioned his oldest daughter, Claudia, nor has he explained why Claudia would be
4 unable to assist Mrs. Roueche. *Id.*, n.4. Defendant also has a brother, but defendant’s motion
5 fails to offer a declaration from his brother explaining why neither defendant’s brother nor the
6 brother’s two daughters can assist with Ms. Roueche’s care. Dkt. # 453 at 10.
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9 Therefore, as in 2021, the record here does not establish extraordinary and compelling
10 circumstances connected to Mrs. Roueche’s health that support a reduction in defendant’s
11 sentence.
12

13 **2. Defendant Has Already Received a Sentence Reduction Pursuant to**
14 **Amendment 782 and Does Not Qualify for Another Reduction.**
15

16 In support of his argument for a sentence reduction due to “a change in the law” as
17 described in U.S.S.G. § 1B1.13(b)(6), defendant again raises Amendment 782 to the Guidelines,
18 which reduced the base offense levels by two levels for most drug quantities. *See* U.S.S.G.
19 § 2D1.1. Notably, defendant has already benefitted from the passage of Amendment 782. Dkt.
20 # 414. In 2019, defendant filed a motion under 18 U.S.C. § 3582(c)(2), seeking a reduction in
21 his sentence based on Amendment 782. Dkt. # 407. This Court recognized that the Amendment,
22 retroactively applied, resulted in a reduction in defendant’s base offense level from 38 to 36,
23 which in turn reduced his Guidelines range to 262–324 months. Dkt. # 414. In light of this
24 change and the relevant § 3553(a) factors, this Court reduced defendant’s sentence by 72 months
25 and sentenced him to 288 months, a sentence in the middle of the new Guidelines range. *Id.*
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1 Defendant now seeks an additional two-level reduction of his base offense level pursuant
2 to U.S.S.G. § 1B1.13(b)(6), arguing that his sentence is “unusually long” and “a change in the
3 law”—Amendment 782—has produced “a gross disparity between the sentence being served
4 and the sentence likely to be imposed at the time the motion is filed.” Dkt. # 450 at 9–11.
5 Specifically, defendant argues that his money laundering offense was “entirely . . . dependent on
6 the drug-trafficking offenses.” *Id.* “Thus,” defendant contends, “if a reduction was appropriate
7 for the drug-trafficking offense levels, then it was appropriate for the money laundering as well”
8 and defendant should now receive an additional two-level reduction on the money laundering
9 offense. *Id.*

10 As an initial matter, defendant has not shown that his current sentence, which is in the
11 middle of the new Guidelines range, is “unusually long.” U.S.S.G. § 1B1.13(b)(6). *See Rita v.*
12 *United States*, 551 U.S. 338, 346–347 (2007) (finding a presumption of reasonableness for a
13 “within-Guidelines” sentence). Nor has defendant shown that a “gross disparity” exists between
14 his current sentence and the sentence he would likely receive now. U.S.S.G. § 1B1.13(b)(6).
15 Substantively, defendant’s argument for a new two-level reduction appears to rest on the
16 mistaken belief that defendant’s original base offense level, 38, was the sum of two numbers:
17 one number that was connected to his money laundering offense and a separate number that was
18 connected to his drug-trafficking offenses, with only the later number having received a two-
19 level reduction in 2019. That is not how defendant’s original base offense level was calculated.
20 *See* PSR ¶ 83–86.

1 Following the Guidelines, before any calculation occurred defendant's money laundering
2 offense was grouped with his underlying drug-trafficking offenses. PSR ¶ 84 (Citing U.S.S.G.
3 § 3D1.2(b)). Then, because the guideline application for money laundering provided the highest
4 offense level, the guideline for money laundering was used to determine defendant's offense
5 level. PSR ¶ 85 (Citing U.S.S.G. § 3D1.3). The guideline application for money laundering
6 "states that the base offense level [for money laundering] is the offense level for the underlying
7 offense from which the laundered funds were derived." PSR ¶ 86 (Citing U.S.S.G. § 2S1.1).
8 Therefore, the base offense level for defendant's money laundering offense incorporated the
9 base offense level for his drug-trafficking offenses. *Id.* Rather than involving two separate
10 numbers, defendant's base offense level calculation involved just one number, 38, and that
11 number reflected the offense level for both the money laundering *and* drug trafficking crimes.
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16 *Id.*

17 As discussed above, in 2019 defendant received a two-level reduction to this base offense
18 level that changed it from 38 to 36 and resulted in his sentence being reduced by 72 months.
19 Dkt. # 414. As defendant correctly points out, that reduction was spurred by Amendment 782's
20 reduction to the base offense level for drug quantities. *Id.*, Dkt. # 450 at 10. However, because
21 of the interrelated nature of the offense levels at issue in this case, this Court's decision to
22 reduce the base offense level for defendant's drug trafficking offenses in 2019 necessarily
23 reduced the base offense level for defendant's money laundering offense. Put another way: in
24 asking this Court to now reduce defendant's base offense level on the money laundering offense,
25 defendant is asking this Court to do something it has already done.

1 Defendant cites two cases in support of his argument for an additional two-level
2 reduction on the money laundering offense. Dkt. # 450 at 11. Neither case supports his position.
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4 First, defendant cites *United States v. Torres*, where, as here, the defendant's money laundering
5 offenses were grouped with his drug trafficking offenses. 856 F.3d 1095, 1097 (5th Cir. 2017).
6 As here, Torres' money laundering offense was used to determine his base offense level, with
7 the base offense level for the money laundering derived from the underlying drug trafficking
8 offenses, pursuant to U.S.S.G § 2S1.1. *Id.* As here, a requested two-level reduction under
9 Amendment 782 was at issue. *Id.* However, contrary to defendant's assertions, the most relevant
10 holding from *Torres* is that in these situations, "any reduction or increase in the drug-trafficking
11 level would induce a corresponding change in the money-laundering level." *Torres*, 856 F.3d
12 1095 at 1099. Under *Torres*, therefore, defendant already received a "corresponding change in
13 the money-laundering level" when this Court reduced his drug-trafficking level in 2019. *Id.*,
14 Dkt. # 414.

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18 Second, defendant cites *United States v. Arroyos Fernandez*, where, as here and in
19 *Torres*, the defendant was guilty of both drug trafficking and money laundering. *United States v.*
20 *Arroyos Fernandez*, No. 105CR00209MRWCM1, 2019 WL 3783283, at *1 (W.D.N.C. Aug. 12,
21 2019). As here and in *Torres*, Arroyos Fernandez's offense level for the drug trafficking
22 "became the base offense level for the money laundering count" pursuant to U.S.S.G § 2S1.1.
23
24 *Id.* Applying the holding in *Torres* to Arroyos Fernandez's request for an offense level reduction
25 under Amendment 782, the *Arroyos Fernandez* court found that while "[d]efendant's offense
26 levels for both counts of conviction were dependent on the drug-trafficking offense level" and
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1 “[d]efendant is entitled to a reduction under Amendment 782 of both counts of conviction,” the
2 total offense level reduction for both counts of conviction was a two-level reduction—not, as
3 defendant proposes here, a four-level reduction (with two levels reduced for the money
4 laundering offense and two levels reduced for the drug trafficking offenses). *Id.* Therefore,
5 *Arroyos Ferndandez* also demonstrates that in this case, defendant has already received the full
6 two-level reduction he is entitled to under Amendment 782.
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9 Defendant further argues that yet another two offense levels should be deducted because
10 at sentencing this Court improperly applied a two-level enhancement for defendant’s money
11 laundering offense. Dkt. #450 at 11. This argument is without merit. After considering proposed
12 enhancements that could have resulted in a life sentence for defendant, this Court sentenced
13 defendant based on a total offense level of 41. Dkt. # 371 at 38. That is precisely the total
14 offense level requested by defendant. *Id.*, Dkt. # 339 at 10.
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17 In sum, defendant has failed to show that his sentence is “unusually long” and “a change
18 in the law”—Amendment 782—has produced “a gross disparity between the sentence being
19 served and the sentence likely to be imposed at the time the motion is filed.” U.S.S.G.
20 § 1B1.13(b)(6). Therefore, defendant has not demonstrated an “extraordinary and compelling
21 reason” under U.S.S.G. § 1B1.13(b)(6) for an additional reduction in his sentence.
22

23 **3. Rehabilitation Alone Is Insufficient.**

24

25 Rehabilitation of the defendant “is not, by itself, an extraordinary and compelling reason”
26 that justifies compassionate release. U.S.S.G. § 1B1.13(d) (citing 28 U.S.C. 994(t)). While this
27 Court continues to commend defendant’s rehabilitation efforts, they do not factor into the
28

1 analysis of his current motion given the insufficiencies described in defendant's arguments
2 relating to his mother's health and Amendment 782.

3
4 **C. The 18 U.S.C. § 3553(a) Factors**


5 Having determined that defendant has not made the requisite showing of extraordinary
6 and compelling reasons for compassionate release, the Court need not analyze whether a
7 reduction in defendant's sentence would be consistent with the factors set forth in 18 U.S.C.
8 § 3553(a).
9

10 **IV. Conclusion**

11 For all the foregoing reasons, defendant's third motion for compassionate release (Dkt.
12 # 450) is DENIED.
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14 IT IS SO ORDERED.
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17 DATED this 4th day of November, 2024.
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20 Robert S. Lasnik
21 United States District Judge
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